

The Accidental Franchise

1. What is a franchise?
 - Generally one person setting up someone else in business. Agreement can be oral or written.
 - It typically has 3 elements:
 - Marketing Plan Element.
 - Association with the grantor's trademark.
 - Required Fee. Almost any kind of payment.
 - This is not the only definition. But it is the most often used definition. (i.e. Community of Interest/substantial assistance)
2. So you are a franchise. So what? Franchises are highly regulated.
 - FTC Rule applies nationwide. Recently revamped. Requires 23 items of disclosure.
 - 13 states require franchise registration: CA, HI, IL, IN, MD, MN, ND, NY, RI, SD, VA, WA, WI.
 - Franchise Relations Acts regulate the ongoing relationship.
 - Third kind of regulation in this area – Business Opportunities.
3. Crossover for IP lawyers?
 - IP lawyers prepare various kinds of agreements:
 - trademark licenses
 - distribution agreements
 - patent licenses.
 - IP lawyers help clients solve disputes involving these kinds of relationships

- IP lawyers litigate these disputes
 - For IP licensors there is continuing risk of a license becoming a franchise.
 - IP licensees may benefit from being aware of franchising laws, for use in litigation, negotiation and dispute resolution.
4. Hypothetical – consider the attached term sheet.
- Does it contain all the elements of a franchise?
 - What routine changes to the relationship could change so that it either does or does not contain all the elements of a franchise?

Term Sheet – Trademark License



Parties: Cataclysm Tractor Company (Licensor)
Zoo Animal Clothing Company (Licensee)

Terms: License to use CAT trademark on clothing (t-shirts, overalls, caps, jackets)

Two (2) year license

Market Niche: Products for sale in independent stores and outlets (retailers with up to three locations)

Twelve western states to be specified.

Licensor Services:

- Provide camera ready art at cost
- Policing and enforcement of trademark
- Sponsor annual users conference. Required to attend?

Licensee Obligations:

- Royalties of 15% of gross revenues.
- After first two months, minimum royalties of \$10,000 per month.

Audit rights

Insurance program



About the Speaker

Tal Grinblat is a shareholder of the firm Lewitt, Hackman, Shapiro, Marshall & Harlan in Encino, California. His practice emphasizes franchise and distribution law, trademarks and copyrights. Mr. Grinblat is the incoming Chair of the California Bar Association's Franchise Law Committee. He is also a Certified Specialist in Franchise and Distribution law under the State Bar of California's Specialization Program. Mr. Grinblat's practice emphasizes counseling primarily start up companies on franchise registration and disclosure matters, terminations, renewals and compliance with federal and state laws. Mr. Grinblat has written extensively on franchise, trademark and copyright matters and has been published in the Franchise Law Journal, ABA Intellectual Property Newsletter, Los Angeles Business Journal and San Fernando Valley Business Journal.